

Message Text

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ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-02 LAB-04

NSAE-00 NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15

STR-01 TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01

/083 R

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L/EB:SRBOND (INFO)

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TREASURY:RGOODMAN (INFO)

TREASURY:WMCFADDEN (INFO)

STR:SLANDE (INFO)

COMMERCE:DARRILL (INFO)

ARA/ECP:RSTERN (INFO)

----- 010607

R 032038Z FEB 75

FM SECSTATE WASHDC

TO AMEMBASSY SAN SALVADOR

LIMITED OFFICIAL USE STATE 024305

E.O. 11652: N/A

TAGS: EINV, ETRD, ES

SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES

(GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF THE

TRADE ACT OF 1974, EL SALVADOR

REF: A. STATE 282968 B. 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER
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THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION

(ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS

OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC. 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC. 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDER-TAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN LIMITED OFFICIAL USE

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PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B WILL BE USED. SEVERAL ALTER-NATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINA-TIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6). COMMENTS SHOULD ENCOMPASS, BUT NOT NECESSARILY BE LIMITED TO, IRCA. CITATION TO PRIOR REPORTING WILL SUFFICE IF NO SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN THE INTERIM.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE. AS A "RULE OF REASON," WE ARE LIMITING THE EVALUATION TO CASES ARISING IN THE POST-WAR ERA, I.E. SINCE

JANUARY 1, 1946, OR THE DATE OF INDEPENDENCE OF THOSE COUNTRIES RECEIVING INDEPENDENCE, WHICH EVER IS LATER. SINCE SOME ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, POSTS ARE REQUESTED TO INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A)-(C). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502 (B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502 (B) (6).

6. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT
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OFFICIALS, AND TO ENCOURAGE RESOLUTION OF OUTSTANDING DISPUTES. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE LAW, POLICIES, GENERALIZED PREFERENCES (TARIFFS)
Control Number: n/a
Copy: SINGLE
Draft Date: 03 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE024305
Document Source: CORE
Document Unique ID: 00
Drafter: TRBRODERICK:ARA/CEN:PHWACKERBARTH:J
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750039-0871
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750277/aaaacrho.tel
Line Count: 156
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 STATE 282968, 75 282967
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 09 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 SEP 2003 by BoyleJA>; APPROVED <10 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES (GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF THE
TAGS: EINV, ETRD, ES, US
To: SAN SALVADOR
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006